TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
The District Court's Opinion	3
The Court of Appeals' Opinion	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	19

APPENDIX	Appendix Pages
Opinion of the District Court	1
Opinion of the Court of Appeals	4
Judgment	13

TABLE OF CITATIONS

Cases	Page
American Federation of Musicians v. Stein, 213 F. 2d 679 (6th Cir.), cert. denied, 348 U. S. 873 (1954)	5, 13, 16
Bibb Mfg. Co., 82 NLRB 338 (1949)	8
Busby v. Electric Utilities Employees Union, 147 F. 2d 865 (D. C. Cir. 1945)	13
Calagaz v. Calhoun, 309 F. 2d 248 (5th Cir. 1962)	11
Chapman v. Barney, 129 U. S. 677 (1889)	4, 5, 15, 16
Gray v. International Typographical Union, Civ. Ac. No. 15676 (D. Md. 1964)	10
Great Southern Fireproof Hotel Co. v. Jones, 177 U. S. 449 (1900)	4, 15, 16
James Lee and Sons Co., 130 NLRB 290 (1961)	8

Page

Marshall v. International Longshore Union, 57 Cal. 2d 781, 371 P. 2d 987 (1962) 13

Mason v. American Express Co., 334 F. 2d (2d Cir. 1964) . 5, 16, 18

Montgomery Ward & Co. v. Langer, 168 F. 2d 182 (8th Cir. 1948) 11

Puerto Rico v. Russell & Co., 288 U. S. 476 (1933) ... 5, 6, 12, 14, 15, 16, 18

Swan v. First Church of Christ, 225 F. 2d 745 (9th Cir. 1955) .. 16

Tunstall v. Bhd. of Locomotive Firemen, 148 F. 2d 403 (4th Cir. 1945) 11

Underwood v. Maloney, 256 F. 2d 334 (3rd Cir. 1958) 11

United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (1922) 13

United States v. White, 322 U. S. 694 (1944) 13

Utica-Herbrand Tool Div., 145 NLRB No. 165, 55 LRRM 1223 (1964) 8

Van Sant v. American Express Co., 169 F. 2d 355 (3d Cir. 1947) 5, 16

Constitution and Statutes

CONSTITUTION, ARTICLE III, Section 2 2

JUDICIAL CODE, 28 U. S. C.:

§ 1254(1) 1

§ 1292(b) 4

§ 1332 2

§ 1332(c) 2

§1441(a) 2, 3

Labor-Management Relations Act, Sec. 301(a), 29 U.S.C. § 185(a) 9

301(b), 29 U.S.C. § 185(b) 13

301(c), 29 U.S.C. § 185(c) 18

Labor-Management Reporting and Disclosure Act, 29 U. S. C. § 401 et seq. 9, 13

Organic Act of Puerto Rico, Secs. 41, 42, 48 U.S.C. §§ 863, 864. 5, 15

Miscellaneous

Page

Comment, Unions as Juridical Persons, 36 Yale L. J. 712 (1957). 8, 18

3 Moore, Federal Practice ¶ 17.25 (1963) 18

Note, 33 Colum. L. Rev. 540 (1933) 5, 18

Petition for Certiorari, Walker v. State of North Carolina, October Term, 1960, No. 110 (cert. denied 364 U. S. 832) 8

Report of the Subcommittee on Labor and Public Welfare, State Court Injunctions, S. Doc. No. 7, 82d Cong. 1st Sess. (mislabeled 81st Cong. 2d Sess.) (1951) 8

United States Judicial Conference, Report of the Committee on Jurisdiction and Venue (1951) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

UNITED STEELWORKERS OF AMERICA, AFL-CIO
Petitioner.

v.

R. H. BOULIGNY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on August 6, 1964.

OPINIONS BELOW

The opinion of the district court, which is unreported, is reproduced in the Appendix to this petition. The opinion of the Court of Appeals is reported at 336 F. 2d 160, and is reproduced in the Appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on August 6, 1964, and is reproduced in the Appendix to this petition. This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U. S. C. §1254(1).

QUESTION PRESENTED

Whether the modern-day labor union—treated as a legal entity for virtually every other purpose—is to be treated as a legal entity with its own citizenship for purposes of the diversity jurisdiction of the federal courts?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the Constitution of the United States provides, in pertinent part:

> "The judicial Power shall extend . . . to Controversies . . . between Citizens of different States. . ."

28 U. S. C. §1332 provides, in pertinent part:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between——
>
> "(1) citizens of different States;
>
> * * *
>
> "(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

28 U. S. C. §1441(a) provides:

> "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

STATEMENT OF THE CASE

On May 29, 1963, Respondent, R. H. Bouligny Inc. ("the Company"), sued Petitioner, United Steelworkers of America ("the Union"), an unincorporated labor union, in the Superior Court of Mecklenburg County, North Carolina, alleging that it had been libelled in a leaflet published by the Union. The complaint prayed for $100,000 compensatory damages and an additional $100,000 punitive damages (R. App. 1-3).[1]

On June 18, 1963, the Union removed the case to the United States District Court for the Western District of North Carolina, pursuant to 28 U. S. C. §1441(a). The removal petition recited that the Company is a North Carolina citizen (being incorporated and having its principal place of business in that State), that the Union is a Pennsylvania citizen (having its headquarters and principal place of business in that State), and that accordingly the District Court had jurisdiction on the basis of diversity of citizenship between the parties (R. App. 4-5).

The Company moved to remand, on the ground that the Union "is an unincorporated association and has members who are citizens of North Carolina," and that consequently "there is no diversity of citizenship" (R. App. 6).

The District Court's Opinion

The district court refused to remand. It found that the Union has members who are citizens of North Carolina, but "that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers, and that its principal office and

[1] The transcript of record contains the Appendix used in the court below and the proceedings in the court below, paginated separately. To avoid confusion, we refer to the pages in the Appendix below as "R. App.", and to all other portions of the record as "R."

place of business is in Pittsburgh, Pennsylvania" (*Appendix 1-2*).[2]

The court chose to follow what it described as "a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes." It stated that "there appears to be no common sense reason for treating an unincorporated labor union differently from a corporation." While acknowledging that "the greater number of cases still hold" that diversity is lacking if a labor union has a member whose citizenship is not diverse from that of the other party, the court described those cases as "poorer reasoned" than the trend which it was following. (*Appendix 2*).

The Court of Appeals' Opinion

The Company obtained interlocutory review pursuant to 28 U. S. C. §1292(b). (R. 21-22). The Court of Appeals reversed. It recited, and did not disturb, the district court's finding that the Union is "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania." (*Appendix 5*). It concluded, however, that no matter how complete an unincorporated association's legal personality, the citizenship of each of its members is controlling for diversity purposes.

This result, the court said, was dictated by the Supreme Court's opinions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900) stating that the rule attributing "citizenship" to corporations "must not be extended" to any other type of collective association. (*Appendix 7-6*).

The Union argued below that the rigid rule of these early cases had been modified by the subsequent decision in

---

[2] Pages denominated "*Appendix*" are those of the appendix to this petition.

Puerto Rico v. *Russell & Co.*, 288 U. S. 476 (1933), holding an unincorporated *Sociedad en Comandita* to have a citizenship distinct from that of its members. The court below held, however, that *Russell* "furnishes no support whatsoever for such a position," because *Russell* interpreted the word "citizen" as it appears in the Organic Act, now 48 U. S. C. §§ 863, 864, and not as it appears in the diversity statute. The court found nothing in *Russell* to indicate that this Court "was consciously expanding federal diversity jurisdiction." (*Appendix* 7-9).

The court acknowledged, however, that its reading of *Russell* is in direct conflict with that of three other circuits:

> "*American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6 Cir.), *cert. denied*, 348 U. S. 873 (1954), since it rested upon *Puerto Rico* v. *Russell & Co.*, supra, can furnish no support for defendant's contention. . . .
>
> * * *
>
> "The rationale of *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3 Cir. 1947), which found diversity, appears to be that since a New York joint stock association is treated 'for all practical purposes' as a corporation it does not fall within the rule of *Chapman* v. *Barney* . . . The court also cites Prof. Moore's comment on *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, at 2 MOORE'S FEDERAL PRACTICE, 2100, to the effect that the Chapman rule is beginning to show signs of being outmoded. Cf. 33 COLUM. L. REV. 540 (1933). We have rejected this interpretation of *Russell*.
>
> "In *Mason* v. *American Express Co.*, 33 L. W. 2016 (2 Cir. decided 7/2/64) the Second Circuit was persuaded by the language of *Russell* to extend citizenship to a New York joint stock association for diversity purposes. We must respectfully disagree with that opinion." (*Appendix 9, 10*, n. 3).

The court next stated that, "whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute" assigning dual citizenship to corporations. This resulted, the court said, for two reasons: first, since Congress had now specifically defined the citizenship of one type of artificial body—the corporation—the courts should no longer undertake to define the citizenship of other types; and second, labor unions "would be treated more favorably than corporations for diversity purposes" if they were assigned a single citizenship, for corporations now have two. (*Appendix 10-11*).

The court "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court." (*Appendix 12*, n. 4).

REASONS FOR GRANTING THE WRIT

> "For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling." *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 479 (1933).

1. The question presented in this case is whether a labor union which is a "juridical person as fully and completely as if it were organized as a corporation" (*Appendix 1, 5*) is to be treated similarly to a corporation for diversity purposes.

The court below has held that a labor union, unlike a corporation, may not remove an action to federal court on the ground of diversity of citizenship if it has a single member who is a citizen of the same state as the opposing party. Since most unions, like petitioner, have at least a few members in each of the fifty states, the decision below effectively

bars them from ever removing cases to federal court on diversity grounds.

This result undermines the very purpose for which the diversity jurisdiction was created—avoidance of local prejudice. As Alexander Hamilton explained in Federalist No. 80, the federal courts are "the proper tribunals for the determination of controversies between different states and their citizens," for in such cases "the state tribunals cannot be supposed to be impartial." Fear of local prejudice survives today as the principal justification for preservation of the diversity jurisdiction. Thus, in 1951, the Committee on Jurisdiction and Venue of the Judicial Conference, opposing suggestions that diversity jurisdiction be abolished, explained:

> "The question involved is not a theoretical one, but one of great practical significance. To deny the right to resort to the Federal courts means that in controversies between citizens of different states, one must seek justice in the courts of the State of his adversary where he will find, in many of the States, that trial by jury has been stripped of many of its safeguards and the judge has been denied the common-law powers necessary to the proper administration of justice. . . . To require a nonresident to try his case in such a tribunal is not only to turn him over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel, it is also to deny to him the sort of trial by jury which as a citizen of the United States he is entitled to have in the Federal courts . . .
>
> ". . . [T]here is a great bulk of expert opinion from those who litigate in the courts that local prejudice continues to exist, and that the Federal courts are in truth a strong protection against it."[8]

[8] Attached to S. Rep. No. 1830, 85th Cong. 2d Sess. (1958), and printed in 1958 U. S. Code Congressional and Administrative News, 3114 at 3116-17.

There have been suggestions by some commentators—though rejected by Congress and the Judicial Conference—that corporations no longer suffer local prejudice. But surely no similar claim can be made about labor unions. The labor movement, from its birth, has had predominantly a regional development. Its strength, its support, and its acceptance have come mainly from the heavily industrial states. Elsewhere, labor unions are still regarded as "foreigners," and when they venture into these areas in attempts to organize employees, they encounter widespread community hostility. A not atypical situation was described by the NLRB recently, in *Utica-Herbrand Tool Div.*, 145 NLRB No. 165, 55 LRRM 1223 (1964). A union's organizing attempt was opposed not only by the employer, but by the mayor, policemen, state legislators, the newspaper, the radio station and citizens' committees. The union representatives were called "outside agitators." Employees were warned that unions had made "distress areas" of other parts of the country, and that other companies would relocate in the area only "if we keep the climate right." [4] Small wonder that labor unions fear local prejudice in such areas, and seek to remove their lawsuits to the federal courts!

The need for an impartial forum is particularly acute because much "non-federal" litigation against labor unions

---

[4] For other typical examples, see *Bibb Mfg. Co.*, 82 NLRB 338, 355-62 (1949); *James Lee and Sons Co.*, 130 NLRB 290 (1961); Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 744-45 (1957) and references cited in nn. 189, 190.

For a demonstration of how community prejudice can affect the quality of justice received by labor unions in state courts, see *State Court Injunctions*, Report of the Subcommittee on Labor and Public Welfare, S. Doc. No. 7, 82d Cong., 1st Sess. (mislabeled 81st Cong. 2d Sess.) 6-12, 92-118 (1951) (finding a prevalence in the southeast of "abuse of injunctions" against labor unions). This report is summarized and discussed in Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 745 and n. 191. See also Petition for Certiorari in *Walker* v. *State of North Carolina*, October Term, 1960, No. 110 (certiorari denied, 364 U. S. 832).

involves highly inflammatory issues—allegations of picket line violence, defamation, or other tortious conduct.[5] Typically, when a union attempts to organize in a generally unorganized section of the country, community emotions will be raised to fever pitch. Many tort actions against unions commence precisely in those circumstances. The complaint will ask huge sums in actual damages, together with enormous punitive damages. The union, far from home and virtually friendless, will, in the words of the Judicial Conference, be "turn[ed] . . . over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel."

To characterize the union in these circumstances as a "citizen" of the forum state, simply because it has a few members there, is to indulge the cruelest of fictions. Here, for example, Respondent, a prominent local corporation, has sued the petitioner union for $100,000 actual and $100,000 punitive damages. It can be anticipated that a local jury will realize that any verdict it renders will be paid not by the union's handful of local members, but from its general treasury in Pittsburgh. This temptation to assist a local citizen at the expense of the distant treasury of an unpopular defendant constitutes the very local prejudice which the removal procedure is designed to mitigate or prevent.

Petitioner's plight in this case is one which is recurring with increasing frequency. The "six-figure" damage suit has become a popular weapon to scare off union organizing attempts in unorganized areas. There are at least seven other libel suits against labor unions, each seeking astronomical damages, now pending on removal in the district courts of the Fourth Circuit alone. In each, the union removed

---

[5] Contract actions presumably are removable on "federal question" grounds by virtue of §301 of the Labor Management Relations Act, 29 U. S. C. §185, and most suits involving internal union affairs are now brought under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 *et seq.*

the case to federal court on the ground of diversity of citizenship, and in each a motion to remand is being held in abeyance pending final disposition of the present case.[6]

The considerations involved are not, of course, one-sided. Just as there are some areas of the country in which union defendants fearful of local prejudice wish to remove their cases to the federal courts, so there are other areas in which plaintiffs, fearful of local prejudice, would like to sue unions in the federal courts on diversity grounds.[7] Reversal of the decision below would of course facilitate avoidance of local prejudice in both these situations.

Anomalously, the court below has held that a plaintiff who wants to bring a labor union into federal court on diversity grounds can do so, simply by suing the union as a "class" rather than as an entity, and naming as representatives of the class only individuals whose citizenship is di-

---

[6] The following table lists the other seven pending cases, and the damages sought in each:

Case and Docket No.	*Jurisdiction*	*Damages Sought*
White v. United Steelworkers of America, Civ. Ac. No. 1798	W.D.N.C.	$200,000
Braxton v. Int'l Ladies Garment Workers Union, Civ. Ac. Nos. 596-97	E.D.N.C.	$1,000,000
Haddock v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 598	E.D.N.C.	$1,000,000
Horne v. Int'l Ladies Garment Workers Union, Civ. Ac. No. 599	E.D.N.C.	$1,000,000
Kindred v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-45R	W.D.Va.	$125,000
Rowe Furniture Corp. v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-46R	W.D.Va.	$300,000
Tingler v. Upholsterers' Int'l Union et al., Civ. Ac. No. 64-C-47R	W.D.Va.	$75,000

[7] For example, in the one district of the Fourth Circuit which sits in a heavily industrialized area, a libel action against a labor union was instituted recently in federal court *by the plaintiff*. The action was dismissed for lack of jurisdiction on October 21, 1964, on the basis of the Fourth Circuit's decision in the instant case. *Gray* v. *International Typographical Union*, Civ. Ac. No. 15676 (D. Md.).

verse from the plaintiff's. *Tunstall* v. *Bhd. of Locomotive Firemen,* 148 F. 2d 403 (4th Cir. 1945). This device has been widely heralded as a means to prevent labor unions from enjoying "virtual immunity from suit in federal courts." *Calagaz* v. *Calhoun,* 309 F. 2d 248, 252 (5th Cir. 1962). See also *Montgomery Ward & Co.* v. *Langer,* 168 F. 2d 182 (8th Cir. 1948). Cf. *Underwood* v. *Maloney,* 256 F. 2d 334 (3rd Cir. 1958).

But this expansion of diversity jurisdiction to permit *plaintiffs* to bring labor unions into federal court, though desirable in itself, renders the present decision of the court below all the more unfair. For it gives the plaintiff unprecedented power to determine the forum in which the case will be tried. If he wants to be in federal court, he will utilize the "class action" device to create diversity jurisdiction. If, on the other hand, he prefers to be in the State court, he need only sue the union there as an entity, and, under the decision of the court below, the union will be powerless to remove.

It has been said that the development permitting plaintiffs to sue unions in federal court on diversity grounds was necessary "to prevent a failure of justice." *Calagaz, supra,* at p. 252. But surely equity dictates that the labor union have access to the federal courts equally with its adversaries in litigation. The decision of the court below, denying that equal access, countenances a far greater "failure of justice."

The court below recognized that there is "informed sentiment" supporting the treatment of unincorporated associations such as labor unions as citizens of the State where the principal place of business is located. (*Appendix 11*). Indeed, it "readily concede[d] that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes." (*Appendix 12,* n. 4). It reasoned, however, that "the question of policy is certainly not one for decision of an intermediate appellate court." (*Id.*).

2. The decision of the court below is inconsistent with

this Court's decision in *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476 (1933).

In *Russell*, this Court held that an unincorporated Puerto Rican "sociedad en comandita" had a unique citizenship, independent of that of its members, for purposes of federal jurisdiction. In the course of the opinion, the Court enunciated a clear standard for determining the citizenship status of unincorporated associations. If an association is endowed with a "complete legal personality" (288 U. S. at 479) and is "consistently regarded as a juridical person" (*Id.* at 481), there is "no adequate reason for holding that [it] has a different status for federal jurisdiction than a corporation" (*Id.* at 482). On the other hand, an association which, though suable as an entity, lacks other attributes of a juridical entity, must be deemed a citizen of each of the states in which it has members, because "what [is] but an association of individuals for so many ends and a juridical entity for only a few, [is] not easily to be treated as if it were a single citizen" (*Id.* at 480).

The sociedad's characteristics which the Court found to constitute a "complete legal personality" were of two types: (1) the law permits the sociedad to act as an entity in its dealings with the outside world;[8] and (2) in internal matters the law recognizes the sociedad as something more than, and distinct from, its individual members.[9]

There can be no question that the labor union today possesses a "complete legal personality" as defined in *Russell*.

---

[8] Specifically, the sociedad "is created by articles of association filed as public records"; "may contract, own property, and transact business, sue and be sued in its own name"; and functions through managers in whom "powers of management" are vested (288 U. S. at 481).

[9] Specifically, the sociedad "endures . . . regardless of the death or withdrawal of individual members"; its members "are not primarily liable for its acts and debts"; and its creditors are preferred with respect to its assets and property over the creditors of individual members" (288 U. S. at 481).

The Sixth Circuit has found the characteristics of labor unions "much more impressive" than those of the sociedad in *Russell* "to compel recognition of unincorporated unions as juridical persons equivalent to corporations for purposes of citizenship in cases in which jurisdiction is founded upon diversity of citizenship." *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 687 (6th Cir.) *cert. denied* 348 U. S. 873 (1954). Likewise, the district court in the present case found (and the Court of Appeals did not disturb its finding) that the Union "is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much power centered in the governing officers" (*Appendix 1, 5*). That the modern-day labor union has a complete legal personality is likewise the teaching of *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 385-86 (1922); *United States* v. *White*, 322 U. S. 694, 701-03 (1944); *Busby* v. *Electric Utilities Employees Union*, 147 F. 2d 865, 867-68 (D. C. Cir. 1945); and *Marshall* v. *International Longshore Union*, 57 Cal. 2d 781, 371 P. 2d 987 (1962).

Moreover, whatever conceivable doubt there might previously have been as to the completeness of the labor union's legal personality surely was removed with the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§ 401 et. seq. Even prior to 1959, Congress had provided union members freedom from liability comparable to that of corporate shareholders under State law. Section 301(b), Labor-Management Relations Act, 29 U. S. C. § 185(b).[9a] But in 1959, through the LMRDA, Congress filled out the labor union's legal personality so that it is virtually indistinguishable from the corporation's in every

[9a] Section 301(b) provides that: "Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

respect. Thus, the LMRDA requires every union to "adopt a constitution and bylaws" and to file them as public records with the Secretary of Labor, 29 U. S. C. §§ 431(a), 435(a), just as corporations are required by State law to adopt and file by-laws. And it regulates virtually every aspect of the union's relationship with its members, in much the same way as State law regulates the relationship of a corporation with its shareholders.[10] The basic premise justifying such regulation is Congress' judgment that a union is not simply a group of individuals, but rather a complex institution with an existence so distinct from its members as to require comprehensive statutory regulation of the union-member relationship. "Trade unions have grown well beyond their beginnings as relatively small, closely knit associations of workingmen where personal, fraternal relationships were characteristic. Like other American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics. . . ." S. Rep. No. 187, 36th Cong. 1st Sess. 6 (1959).

The court below dismissed *Russell* as irrelevant, because *Russell* involved the determination of federal jurisdiction under the Organic Act of Puerto Rico (now 48 U. S. C.

---

[10] E.g., the LMRDA contains a "bill of rights" which members may enforce against the union by private legal action (29 U. S. C. §§411-15); it requires unions to file public reports concerning their organizational structure and finances (29 U. S. C. §431); it requires their officers to report any financial relationships which might involve them in conflicts of interest (29 U. S. C. §432); it regulates the relationship between national and local unions (29 U. S. C. §§461-66); it provides a comprehensive code governing the election of union officers (29 U. S. C. §§481-83); it creates statutory standards of fiduciary responsibility for union officers (29 U. S. C. §501) and requires that they be bonded (29 U. S. C. §502); it forbids certain types of loan transactions between unions and their officers or employees (29 U. S. C. §503); and it creates certain statutory qualifications for union office (29 U. S. C. §504).

§§ 863, 864), not the diversity statute.[11] It considered itself bound by this Court's earlier decisions in *Chapman* v. *Barney*, 129 U. S. 677 (1889) and *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449 (1900), in which a joint stock company and a limited partnership were held to lack citizenship, diversity being made to depend upon the citizenship of each of their members. In these early cases, the Court had stated broadly that the rule ascribing a single citizenship to corporations "must not be extended" to embrace unincorporated associations. The court below found nothing in the *Russell* opinion to indicate that this Court "was consciously expanding federal diversity jurisdiction."

This analysis will not survive a reading of the *Russell* opinion. While, to be sure, the precise issue in *Russell* was whether the sociedad had a citizenship for the purpose of federal jurisdiction under the Organic Act, rather than the diversity statute, both the sociedad (which insisted that it was not a citizen) and the Court (which found that it was) treated the questions as indistinguishable. Thus the sociedad, in its brief (77 L. Ed. 905), relied upon *Chapman* v. *Barney* and *Great Southern Fireproof Hotel Corp.* v. *Jones, supra,* in support of its position. And the Court, rejecting that position, couched its entire opinion as an analysis of the diversity precedents. Noting that corporations have been treated as citizens for *diversity* purposes because of their

[11] *Russell* was a suit by the Puerto Rican government to collect assessments on land held by an unincorporated *Sociedad in Comandita,* none of whose members were citizens of Puerto Rico. The sociedad removed the case to federal district court in San Juan, pursuant to Sections 41 and 42 of the Organic Act, now 48 U.S.C. §§ 863, 864, which confer removal jurisdiction on that court not only over "all cases cognizable in the district courts of the United States" but also over "all controversies where all of the parties on either side of the controversy are . . . citizens of a State, Territory, or District of the United States not domiciled in Peurto Rico." The sociedad argued that it fell within the latter provision because, as an unincorporated association, the citizenship of its members controlled and none of them were citizens of Puerto Rico. The Court held, however, that the sociedad was itself a citizen of Puerto Rico.

complete legal personalities (288 U. S. at 479-80), and that the sociedad likewise had a complete legal personality (*Id.* at 481-82), the Court saw "no adequate reason for holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation" (*Id.* at 482). *Chapman* and *Great Southern Fireproof* were distinguished *not* because they were diversity cases, but because the particular associations involved in those cases had had legal personalities "too incomplete" (*Id.* at 480).

Quite clearly, the standards enunciated in *Russell* were intended to govern the determination of citizenship "for purposes of federal jurisdiction" generally, not solely the Organic Act of Puerto Rico.

3. The decision of the court below conflicts, as it acknowledged, with decisions of several other Courts of Appeals. Contrary to the decision of the Court below—that *Chapman* and *Great Southern Fireproof* control, and that no unincorporated association, regardless how complete its legal personality, has a citizenship of its own for diversity purposes—these other Courts of Appeals have viewed *Russell* as enunciating the controlling standard for diversity purposes, and have assigned citizenship to unincorporated associations possessing complete legal personalities. *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964); *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir.), *cert. denied* 348 U. S. 873 (1954); *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3d Cir. 1947). See also, *Swan* v. *First Church of Christ*, 225 F. 2d 745 (9th Cir. 1955).

The *Mason* decision, rendered a month before the decision below, is representative. There, the Second Circuit, reasoning that *Chapman* was reversed by the subsequent decision in *Russell*, found that a joint stock association—the very type of association held not to have a citizenship in *Chapman*—now has a single citizenship for diversity purposes. Its analysis of *Russell*, exemplified by the following

excerpts, could not be more squarely in conflict with the reasoning of the court below.

"It is our considered judgment . . . that the Supreme Court had abandoned the artificial and mechanical rule of Chapman v. Barney in favor of a more flexible test for capacity for citizenship, a test which demands that consideration be given to whether an organization's essential characteristics sufficiently invest it, like a corporation, with a complete legal personality distinct from that of the members it represents . . .

* * *

"[O]ur refusal to regard Chapman v. Barney as controlling law today stems primarily from our belief that the Supreme Court, some forty years after Chapman v. Barney, decided to depart from it . . .

* * *

"In 1933 the Supreme Court, in Puerto Rico v. Russell & Co., supra, decided to treat a Puerto Rican business organization as a citizen for jurisdictional purposes despite the fact that it was not a corporation; and although the break with the past there achieved was not as clean as it might otherwise have been, since the court cited Chapman v. Barney without explicitly overruling it, we are nevertheless satisfied that the break was a clear one . . .

* * *

"This systematic appraisal of an organization's essential features under the law of its creation, in order to determine whether these features entitled it to the same treatment as a separate juridical person for diversity purposes as that accorded a corporation, must be regarded as representing a clear departure from Chapman v. Barney's basic assumption that only corporations were entitled to treatment as separate citizens for diversity purposes, and a departure from that

case's consequent mechanical determination of the issue of capacity for citizenship on the basis of whether a state had or had not pinned on an organization the corporate label." (334 F. 2d at 393, 395, 396, 396-97).

Commentators, too, have viewed *Russell* as modifying the prior treatment of unincorporated associations for diversity purposes. Comment, *Unions as Juridical Persons*, 66 Yale L. J. 712, 742-49 (1957); 3 Moore, Federal Practice §17.25, pp. 1413-14 (1963); Note, 33 Colum. L. Rev. 540, 541 (1933).

4. Apart from its holding that *Russell* is inapplicable, the court below briefly listed two other grounds to support its decision.

A. The Court below stated that "whatever basis there once was for the belief that Russell intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute." This is in direct conflict with the Second Circuit's decision in *Mason* v. *American Express Co., supra.* In *Mason,* decided a month before the decision below, the Second Circuit, though demonstrating its awareness of the 1958 amendment (334 F. 2d at 394 n. 2), concluded that *Russell* states the controlling principles for determining the citizenship status of unincorporated associations.

B. The court below reasoned that assigning a single citizenship to labor unions might lead to a determination that they have but one residence for *venue* purposes as well (*Appendix 11*). The court below apparently overlooked that Congress has expressly defined the venue of actions involving labor unions. Section 301(c) of the Labor-Management Relations Act, 29 U. S. C. § 185(c) provides:

"For the purposes of actions and proceedings by or against labor organizations in the district courts of the

United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

CONCLUSION

For the reasons set forth hereinabove, this petition should be granted.

Respectfully submitted,

DAVID E. FELLER
ELLIOT BREDHOFF
JERRY D. ANKER
MICHAEL H. GOTTESMAN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036
JAMES B. LEDFORD
Law Building
Charlotte, North Carolina

Attorneys for Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF NORTH CAROLINA CHARLOTTE DIVISION

Civil No. 1798

N. F. WHITE, JR.,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association,
Defendant.

and

Civil No. 1797

R. H. BOULIGNY, INC., a corporation,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, an unincorporated association,
Defendant.

MEMORANDUM OPINION

CRAVEN, Chief Judge:

On plaintiffs' motion to remand the above-captioned cases, the court finds the ultimate facts to be that members of the defendant unincorporated association are citizens of North Carolina and that the defendant union is a juridical person as fully and completely as if it were organized as a corporation, having as great unity of action and as much

power centered in the governing officers, and that its principal office and place of business is in Pittsburgh, Pennsylvania. See: *American Federation of Musicians* v. *Stein*, 213 F. 2d 679 (6th Cir. 1954). There is a trend to treat unincorporated associations in the same manner as corporations and to treat them as citizens of the state wherein the principal office is located for jurisdictional purposes. But, the greater number of cases still hold that even in cases in which labor unions may sue or be sued by association name they can have no juridical person citizenship for purposes of diversity jurisdiction. Barron & Holtzoff, *Federal Practice & Procedure*, Section 569. Neither the Supreme Court nor the Court of Appeals for the Fourth Circuit has ever ruled specifically upon the question. See: *Textile Workers Union of America* v. *Cone Mills Corp.*, 268 F. 2d 920 (4th Cir. 1959).

The approach and rationale of the *Stein* case is extremely persuasive. There appears to be no common sense reason for treating an unincorporated national labor union differently from a corporation. See: 66 Yale L. J. 742.

I am caught on the horns of a dilemma. To remand is to adopt the poorer reasoned but more firmly established rule. To retain jurisdiction may result in several days wasted trial time ending in ultimate dismissal for failure of jurisdiction.

An order remanding a case to the state court from which it was removed is not reviewable on appeal. 28 U. S. C. A. Section 1447(d); Barron & Holtzoff, *Federal Practice & Procedure*, Section 109. See: *Santa Margarita Mutual Water Co.* v. *State Water Rights Board of the State of California*, 165 F. Supp. 870, 879, for an interesting attempt to secure appellate review.

Retention of jurisdiction *is* appealable, and may be reviewed in the Court of Appeals for the Fourth Circuit. On my own motion, I certify that I am of the opinion that the order I am about to sign denying the motion to remand

involves a controlling question of law as to which there is substantial ground for difference of opinion, and I am further of the opinion that an immediate appeal from this order would materially advance the ultimate determination of the litigation, and would avoid an inherent risk of several days wasted trial time, and be in the interest of justice. Further proceedings in the district court are stayed to permit appeal to be taken from the order dismissing the motion for remand, the application for such review to be made within ten days after the date of the order denying remand. 28 U. S. C. A. Section 1292(b).

Counsel may submit an appropriate order.
This *12th* day of November, 1963.

J. B. CRAVEN, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Appendix 4

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326.

R. H. BOULIGNY, INC.,
Appellant,

versus

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, an unincorporated association,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE. J. BRAXTON CRAVEN, JR., DISTRICT JUDGE.

(Argued April 28, 1964. Decided August 6, 1964.)

Before SOBELOFF, Chief Judge, and BOREMAN and J. SPENCER BELL, Circuit Judges.

J. SPENCER BELL, Circuit Judge:

This is an appeal from an order of the district court denying a motion to remand the case to the state court. The district court has certified the appeal under 28 U. S. C. A. §1292(b)(1958). We exercised our discretion to permit the appeal.

The plaintiff, a North Carolina corporation, brought suit for libel growing out of an organizational campaign in the state court against the defendant, United Steelworkers of America, an unincorporated labor union having its headquarters and principal place of business at Pittsburgh, Pennsylvania. The defendant removed the case to the district court on the grounds both of diversity of citizenship and that the subject matter of the action arises under the laws of the United States. Plaintiff moved to remand the case to the state court. In contesting plaintiffs motion the defendant contended that it is a citizen of Pennsylvania with its principal place of business in that state, conceding, however, that certain of its members are citizens of North Carolina. The district court found the defendant to be "a juridical person as fully and completely as if it were organized as a corporation . . . and that its principal office and place of business is in Pittsburgh, Pennsylvania." It thereupon entered an order denying the motion to remand and certified an appeal to this court. We conclude that the order of the district court must be reversed with instructions to grant the motion to remand.

We discuss first the question of diversity of jurisdiction. In *Bank of the United States* v. *Deveaux,* 9 U. S. (5 Cranch) 37 (1809), Chief Justice Marshall laid down the principle that a corporation is ". . . a mere creature of the law, invisible, intangible and incorporeal" which for purposes of diversity jurisdiction could not be treated as a citizen notwithstanding the fact that the corporation could sue and be sued in its own name. In 1844, the court departed from this doctrine in the case of *Louisville, C. & C. R.R.* v. *Letson,* 43 (2 Howard) 497 (1844), holding a corporation to be "deemed" a citizen of the chartering state. Pressure from the dissenters eventually forced the Court to return to Marshall's concept in *Marshall* v. *Baltimore and Ohio R.R.,* 57 U. S. (16 Howard) 334 (1853), where it held that a corporation was not a citizen but an artificial

being and that the citizenship of its stockholders must control. However, the court achieved the same end result as in *Letson* (diversity jurisdiction) by creating a conclusive persumption that all of the stockholders were citizens of the chartering state. This doctrine remained unchanged until 1958 when 28 U. S. C. A. §1332 was amended by adding section (c). WRIGHT, FEDERAL COURTS 76 (1963). The doctrine has been criticized as an unjustifiable expansion of federal jurisdiction by means of a fiction; nevertheless, unincorporated associations have sought unsuccessfully to bring themselves within the rule.

In *Chapman* v. *Barney,* 129 U. S. 677 (1889), the Supreme Court laid down the rule with respect to unincorporated associations. It held that, for purposes of diversity jurisdiction, the actual citizenship of each of the members of an unincorporated association (in that case a joint stock company) is controlling. In *Great Southern Fireproof Hotel Co.* v. *Jones,* 177 U. S. 449, 454-55 (1900), the Court reaffirmed its holding:

> "This court does not hold that either a voluntary association of persons, or an association into a body politic created by law, is a citizen of a State within the meaning of the Constitution.
>
> . . . .
>
> "But the express company cannot be a *citizen* of New York, within the meaning of the statutes regulating jurisdiction, unless it be a corporation."

The Court, referring to the rule with respect to corporations, made it clear that the rule was not to be extended:

> "That a limited partnership association created under the Pennsylvania Statute may be described as a '*quasi* corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rule heretofore adverted to.

> ***That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations.***" (Emphasis added.) 177 U. S. at 457.

We find no subsequent decision of the Court which would justify us in concluding that the rule has been extended. The Court did not do so in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 (1922). In that case the Coronado Coal Company brought suit against the international and district and local unions of the United Mine Workers for damages under Section 7 of the Sherman Anti-Trust Act for conspiracy to restrain interstate commerce and to damage plaintiff's property. The unions moved to dismiss on the ground that as unincorporated associations they were not subject to suit. Since there was federal question jurisdiction, the diversity of citizenship issue was not involved. In an extended discussion the Court held that unions were suable as such but the Court was careful to limit the application of the rule it was laying down.

> "Though such a conclusion as to the suability of trades unions is of primary importance in the working out of justice and in protecting individuals and society from possibility of oppression and injury in their lawful rights from the existence of such powerful entities as trade unions, ***it is after all in essence and principle merely a procedural matter.*** As a matter of substantive law, all the members of the union egaged in a combination doing unlawful injury are liable to suit and recovery. . . ." (Emphasis added.) 259 U. S. at 390.

We now come to the case which purportedly has furnished the principal support for those who contend that the rule has been weakened. We think that the case furnishes no support whatsoever for such a position. In *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476 (1933), the petitioner, People

of Puerto Rico[1] brought suit in the insular court of Puerto Rico against Russell & Co. to collect a Puerto Rican tax assessment. Russell & Co. was an unincorporated association organized under Puerto Rican law as a *Sociedad en Comandita* (S. en C.). In the tradition of the civil law a *Sociedad en Comandita* has many of the characteristics which both corporations and limited partnerships have under the common law although those of the former predominate. The individual members of the *Sociedad* were not named as parties. They appeared specially and removed the case to the United States District Court for the District of Puerto Rico. The Supreme Court reversed and directed the district court to remand the case to the Puerto Rican insular court. The petition to remove and the decision of the Court were expressly based upon sections 41 and 42 of the Organic Act of Puerto Rico, now 48 U. S. C. A. §§863, 864 (1948). Section 41 provided that in addition to the jurisdiction possessed by the United States District Courts generally, the United States District Court for the District of Puerto Rico should have additionally jurisdiction of "all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States *not domiciled in Puerto Rico.* . . ."[2] (Emphasis added.) Section 42 provided for removal of any

[1] The fact that the plaintiff was the Puerto Rican Government was itself enough to warn the reader that the case could not involve constitutional diversity jurisdiction. A state, or territory, or policial unit cannot be a citizen in that sense. *Postal Tel. Cable Co.* v. *Alabama,* 155 U. S. 482, 487 (1894).

[2] It is obvious that this statute would not be constitutional as applied to an Article III district court. It was valid as enacted because the district court of Puerto Rico was a territorial court created by virtue of the power conferred on the Congress by Article IV §3 to make all needful rules and regulations respecting the territory belonging to the United States. *Balzac* v. *People of Porto Rico,* 258 U. S. 298 (1922); *Porto Rico Ry., Light & Power Co.* v. *Colom,* 106 F. 2d 345 (1 Cir.), *cert. denied,* 308 U. S. 617 (1939).

case in which the court had original jurisdiction under Section 41. Although in view of the character of the plaintiff, the suit could on no theory be entertained as a diversity suit by an Article III court, the Supreme Court said that "admittedly, if the individual members of the *Sociedad* are 'parties' within the meaning of the Organic Act . . . the suit is one within the jurisdiction of the District Court because of their non-residence, *diversity of citizenship* being unnecessary." 228 U. S. at 478. (Emphasis added.) Thus the question before the Court was simply one of the interpretation of the statute—not a question of constitutional diversity jurisdiction. The Court by analogy to a common law corporation held that the defendant, a civil law *Sociedad* had a domicil in Puerto Rico and thus could not claim the domicil of its individual members to acquire the non-resident status required by the Organic Act. Clearly the case does not by any stretch of the imagination hold that the *Sociedad* was a citizen of Puerto Rico for purposes of diversity jurisdiction under Article III. Nor can the Court's analogy between the civil law *Sociedad* and the common law corporation justify a contention that it was consciously expanding federal diversity jurisdiction.

American Federation of Musicians v. *Stein,* 213 F. 2d 679 (6 Cir.), *cert. denied,* 348 U. S. 873 (1954), since it rested upon *Puerto Rico* v. *Russell & Co., supra,* can furnish no support for defendant's contention. Furthermore, although it expressed sympathy with the argument the case did not hold that a labor union was a citizen for diversity purposes. It merely held that the district court was justified in issuing a temporary injunction until the issue could be fully studied. It is interesting to note that the district court, when it did reach the issue, rejected the contention. *Stein* v. *American Federation of Musicians,* 183 F. Supp. 99 (M.D. Tenn. 1960). After reviewing the cases, the court reached the conclusion that the courts were following the rule that in cases where federal jurisdiction was based

on diversity grounds "citizenship of an unincorporated association, including labor unions, is determined by the citizenship of its individual members." 183 F. Supp. at 100.[3]

Whatever basis there once was for the belief that *Russell* intended to lay down new principles for the determination of citizenship for diversity jurisdiction purposes, it was reversed by the passage of the 1958 amendment to the diversity statute. Prior to the 1958 amendment which added subparagraph (c) to 28 U. S. C. §1332 the argument that the courts could substantially equate unincorporated associations with corporations by a minor feat of interpretation was easy to make. The statute spoke only of citizens; the question was whether an unincorporated association should be treated as a citizen—a question merely of interpretation—and the court could resolve it by application of the same kind of presumption that had served in the case of corporations. The 1958 amendment, however, did two things that upset the argument: (1) For the first time, it referred specifically to corporations, providing that they shall be "deemed" citizens. The old presumption that all the stockholders are citizens of the state of incorporation has been abandoned; it is now no necessary part of the argument for attributing citizenship to these entities. Corporations

---

[3] The rationale of *Van Sant* v. *American Express Co.*, 169 F. 2d 355 (3 Cir. 1947), which found diversity, appears to be that since a New York joint stock association is treated by the New York courts "for all practical purposes" as a corporation it does not fall within the rule of *Chapman* v. *Barney*. The court lays stress on the fact that the issue was not raised by the defendant until rehearing on appeal. The court also cites Prof. Moore's comment on *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, at 2 MOORE'S FEDERAL PRACTICE, 2100, to the effect that the Chapman rule is itself beginning to show signs of being outmoded. Cf. 33 COLUM. L. REV. 540 (1933). We have rejected this interpretation of *Russell*.

In *Mason* v. *American Express Co.*, 33 L. W. 2016 (2 Cir. decided 7/2/64) the Second Circuit was persuaded by the language of *Russell* to extend citizenship to a New York joint stock association for diversity purposes. We must respectfully disagree with that opinion.

are treated as citizens because the Act of Congress directs that they be so treated. (2) For many corporations the statute now provides dual citizenship: a corporation is to be treated as a citizen of any state by which it is incorporated, and also of the state in which it maintains its principal place of business. This is, in the first place, confirmation of the fact that the fiction as to the citizenship of the stockholders has been abandoned.

It is hardly reasonable to presume that all the stockholders are domiciled in each of two separate states. But the principal point is that, even laying aside the matter of multiple incorporation, unincorporated associations cannot be equated with corporations by a simple judicial decision attributing citizenship to them. They are incapable of dual citizenship, and hence would be treated more favorably than corporations for diversity purposes.

Such associations, if treated as citizens, would also be treated more favorably than corporations in the matter of venue. A corporation may be sued in any district in which it is incorporated, or licensed to do business, or is doing business. 28 U. S. C. §1391(c) (1958). By no stretch of the process of interpretation can this section be read as applying to an unincorporated association. Hence such an association, if treated as a citizen for diversity purposes, would probably be held to be a resident of the district in which its principal office is located, making that district the only proper venue other than the district of the plaintiff's residence.

The Reporters for the American Law Institute's Study of the Division of Jurisdiction between State and Federal Courts are proposing that unincorporated associations be treated as citizens (of the state where the principal place of business is located) for purposes of diversity jurisdiction. See Tent. Draft No. 2, §1301(b)(2) (1964). This indicates that there is informed sentiment in favor of such a development. *Cf.* Comment, ***Unions as Juridical Persons,***

66 YALE L.J. 712 (1957). The proposal, however, is that the change be brought about by an Act of Congress amending the Judicial Code—not by judicial interpretation. The fact that such a change is proposed recognizes the propriety of addressing such a proposal to Congress.[4] It also recognizes the fact that under existing law unincorporated associations cannot be treated as citizens; indeed, in the Commentary (*id.*, p. 61), the law existing to this effect is expressly recognized, though it is said there have been some "inroads" on the rule in recent years.

Having found no diversity, we also think that no federal question jurisdiction exists. The National Labor Relations Act is concerned only with the coercive effect of an alleged libel and not with its character as a common law tort. *Radio Corporation of America,* 106 NLRB No. 251 (1953). In accordance with the doctrine announced in *Erie R.R.* v. *Tompkins,* 304 U. S. 64 (1938), federal courts uniformly have held that libel and slander actions are to be governed by the substantive law of the state in which the torts allegedly occur. *Schenectady Union Publishing Co.* v. *Sweeney,* 122 F. 2d 288 (2 Cir. 1941), *aff'd per curiam,* 316 U. S. 642 (1942). Since the National Labor Relations Act is not concerned with libel as a common law tort and the offense is specifically within the aegis of the substantive state law, we find no federal question.

Reversed.

---

[4] We readily concede that vis-a-vis a corporation it would be quite feasible to treat a modern labor union as a citizen for diversity purposes. But the question of policy is certainly not one for decision of an intermediate appellate court.

Appendix 13

JUDGMENT

Filed and Entered, August 6, 1964

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9326

R. H. BOULIGNY, INC.
Appellant,

versus

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, an unincorporated association,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

This cause came on to be heard on the record from the United States District Court for the Western District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of North Carolina, at Charlotte, for further proceedings not inconsistent with the opinion of the Court filed herein.

s/ SIMON SOBELOFF
Chief Judge, Fourth Circuit
s/ A. T. BOREMAN
United States Circuit Judge
s/ J. SPENCER BELL
United States Circuit Judge